

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Regulation R
(FR R¹; OMB No. 7100-0316)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation R (FR R; OMB No. 7100-0316). The Board's Regulation R - Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934 (12 CFR Part 218) implements certain exceptions for banks from the definition of broker under section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act).² The Exchange Act defines banks to include banking institutions organized in the United States, including members of the Federal Reserve System, Federal savings associations, and other commercial banks, savings associations, and nondepository trust companies that are organized under the laws of a state or the United States and subject to supervision and examination by state or federal authorities having supervision over banks and savings associations.³ Sections 701, 723, and 741 of Regulation R contain certain transactional recordkeeping provisions for banks that utilize these exceptions and certain customer and counterparty disclosure requirements.

The estimated total annual burden for the FR R is 75,563 hours.

Background and Justification

Under section 15 of the Exchange Act, securities brokers generally must register with the U.S. Securities and Exchange Commission (SEC) and join a self-regulatory organization.⁴ However, section 3(a)(4)(B) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in securities activities only in connection with third-party brokerage or networking arrangements; trust and fiduciary activities; permissible securities transactions; affiliate transactions; private securities offerings; transactions related to certain stock purchase plans, sweep accounts, identified banking products, or municipal securities; or safekeeping and custody activities, or that engage in a de minimis number of other securities transactions.

The Exchange Act requires the SEC and Board to jointly adopt rules or regulations to implement these exceptions for banks. The Board's Regulation R implements the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and custody and safekeeping activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, and the

¹ The internal Agency Tracking Number previously assigned by the Board to this information collection was FR 4025. The Board is changing the internal Agency Tracking Number to FR R for the purpose of consistency.

² 15 U.S.C. § 78c(a)(4).

³ 15 U.S.C. § 78c(a)(6).

⁴ 15 U.S.C. § 78o.

execution of transactions other than through a broker-dealer.⁵ As described below, Regulation R includes a number of recordkeeping and disclosure requirements for banks that utilize these exceptions. This information is not available from other sources.

Description of Information Collection

Recordkeeping Requirements

Section 218.723. A bank is exempt from the Exchange Act definition of broker with respect to its trustee or fiduciary activities if, among other requirements, the bank is chiefly compensated for such transactions on the basis of an administration or annual fee, a percentage of assets under management, or a flat or capped per order processing fee. Pursuant to section 723(e) of Regulation R, a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test pursuant to that section's de minimis exclusion must maintain for three years records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.

Disclosure Requirements

Section 218.701. Section 701 of Regulation R implements banks' exception from the Exchange Act definition of broker with respect to referral fees received in connection with third-party brokerage or networking arrangements. Sections 701(a)(2)(i) and 701(b) require banks (or their broker-dealer partners) that utilize this exemption to make certain disclosures to high net worth or institutional customers. Specifically, these banks must clearly and conspicuously disclose (1) the name of the broker-dealer and (2) that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker-dealer and payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer.

Section 701(a)(2)(iii) of Regulation R requires that, before a referral fee is paid to a bank employee under section 701, the bank must provide the broker or dealer the name of the employee and such other identifying information that may be necessary for the broker or dealer to determine whether the bank employee is registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization or is subject to statutory disqualification. Additionally, section 701(a)(3)(iv) requires that a broker or dealer inform the customer if it determines that the customer or the securities transaction(s) to be conducted by the customer does not meet certain standards, and section 701(a)(3)(v) requires that the written agreement between the bank and the broker or dealer shall require that the broker or dealer inform the bank if it determines that a customer is not a high net worth customer or institutional customer, as applicable, or that a bank employee is subject to statutory disqualification.

Section 218.741. Section 741 of Regulation R implements the exemption from the Exchange Act definition of broker with respect to banks effecting transactions in money market

⁵ The Board's Regulation R was issued jointly with the SEC's identical Regulation R found at 17 CFR Part 247.

funds. Section 741(a)(2)(ii)(A) requires a bank relying on this exemption to provide customers with a prospectus for the money market fund securities, not later than the time the customer authorizes the bank to effect the transaction in such securities, if the class or series of securities are not no-load.⁶ In situations where a bank effects transactions under the exemption as part of a program for the investment or reinvestment of deposit funds of, or collected by, another bank, the section permits either bank to provide the customer with the prospectus.

Respondent Panel

The FR R panel comprises banks, as defined in the Exchange Act, that qualify for the exemptions from the Exchange Act definition of broker described above.

Time Schedule for Information Collection

This information collection contains both recordkeeping and disclosure requirements. The recordkeeping and disclosures are required when specific types of transactions have occurred as described above. Records required to be kept must be retained for a minimum of three years.

Public Availability of Data

No data that is the subject of this information collection is made available to the public.

Legal Status

The FR R is authorized pursuant to sections 3(a)(4)(F) and 3(b) of the Exchange Act (15 U.S.C. §§ 78c(a)(4)(F) and 78c(b)), which, among other things, require the Board and the SEC to jointly adopt rules to implement the bank exceptions to the definition of broker under the Exchange Act. Additionally, the Board has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324). Banks seeking the exception from the definition of broker under the Exchange Act must comply with the requirements of FR R. The obligation, therefore, is required to obtain a benefit.

Because these records and disclosures would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process (5 U.S.C. § 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)).

⁶ A no-load security is one that is not subject to a sales load. 12 CFR 218.740.

Consultation Outside the Agency

The Board consulted with the SEC to confirm that there are no changes to the requirements under the regulation or the estimated burden.

Public Comments

On December 16, 2019, the Board published an initial notice in the *Federal Register* (84 FR 68454) requesting public comment for 60 days on the extension, without revision, of the FR R. The comment period for this notice expired on February 14, 2020. The Board did not receive any comments. On August 25, 2020, the Board published a final notice in the *Federal Register* (85 FR 52350).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR R is 75,563 hours. These recordkeeping and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

| FR R | <i>Estimated number of respondents⁷</i> | <i>Annual frequency</i> | <i>Estimated average minutes per response</i> | <i>Estimated annual burden hours</i> |
|--------------------------|--|-------------------------|---|--------------------------------------|
| Recordkeeping | | | | |
| Section 218.723 | 75 | 10 | 15 | 188 |
| Disclosure | | | | |
| Section 218.701 | | | | |
| Disclosures to customers | 1,500 | 100 | 5 | 12,500 |
| Section 218.701 | | | | |
| Disclosures to brokers | 1,500 | 1 | 15 | 375 |
| Section 218.741 | | | | |
| Disclosures to customers | 750 | 1,000 | 5 | <u>62,500</u> |
| <i>Total</i> | | | | <u>75,563</u> |

The estimated total annual cost to the public for the FR R is \$4,363,763.⁸

⁷ Of these respondents, 500 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

⁸ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$20, 45% Financial Managers at \$71, 15% Lawyers at \$70, and 10% Chief Executives at \$93). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2019*, published March 31, 2020, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.